



Ndichu & 2 others v Njuguna & 6 others; Kamiti Farmers Company Limited (Interested Party) (Civil Case E012 of 2023) [2024] KEHC 1419 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEHC 1419 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E012 OF 2023
DO CHEPKWONY, J
JANUARY 25, 2024**

BETWEEN

**ALICE WANJIKU NDICHU 1ST PLAINTIFF
LUCAS KIMANI WORU 2ND PLAINTIFF
MICHAEL KAMAU 3RD PLAINTIFF**

AND

**GIDEON BANGUA NJUGUNA 1ST DEFENDANT
PATRICIA WANJIKU KIHURA 2ND DEFENDANT
SIMON NJUGUNA NJOROGE 3RD DEFENDANT
PETER MUNENE NDEGWA 4TH DEFENDANT
JANE C MUTHONI KARANI 5TH DEFENDANT
FRANCIS NJUGUNA MBUI 6TH DEFENDANT
KENNETH WILFRED WAWERU KIHARA 7TH DEFENDANT**

AND

KAMITI FARMERS COMPANY LIMITED INTERESTED PARTY

RULING

1. What is before the court for determination is the Notice of Motion application dated 29th June, 2023 seeking the following orders:-
 - a. This Honourable Court be pleased to punish as provided in law the Defendants/Respondents including their Advocates on record Mr. Waweru Kihara for the blatant and brazen



disobedience, disregard and or breach of the injunction orders made by the Honourable court on 16th May, 2023.

- b. To avoid an absurdity and ridicule of this Honourable courts orders and processes as well as to accord the Interested Party a fair opportunity to be heard herein, this Honourable court be pleased to direct that the firm of Messrs H. Kago & Company Advocates are duly appointed by the Interested Party in this matter to represent them.
 - c. The costs of this application be borne by the Defendants/Respondents.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Esther Njeri sworn on 29th June, 2023. It has been opposed through the Respondents' Grounds of Opposition dated 4th July, 2023 and the Replying Affidavit of Simon Njuguna Njoroge sworn on 4th July, 2023.
 3. The Applicant holds that the court gave orders on 16th May, 2023 which restrained the Defendants from representing themselves as Directors and/or giving instructions, writing and signing letters, notices or as the case may be on behalf of the Interested Party.
 4. The Applicant holds that there are similar orders from various courts barring the Defendants from holding themselves out as Directors or shareholders of Kamiti Farmers Limited, the Interested Party herein which they are aware of. According to the Applicant, the Respondents disobeyed the court orders and appointed the firm of Ms H.Kago & Company Advocates to act for it the Defendants sought to appoint the firm of Messrs Waweru Kihara to replace it. The Applicant holds that the Defendants have no regard to the court orders and processes and has repeatedly disobeyed them.
 5. The Applicant urges the court to punish the Defendants for contempt of court as the court orders ought to be obeyed are to safeguard the sanctity of the court.
 6. The Respondents have opposed the application *vide* Grounds of Opposition dated 4th July, 2023 on the grounds that it is misconceived, fatally defective, incompetent, unmerited and bad in law. The Respondents hold that the application is done by individuals who are not party to the suit since the firm of H.Kago and Company Advocates is not on record for any party in this suit and therefore lacks *locus standi* to file any pleadings in the matter.
 7. The Respondents also hold that the board resolution dated 14th June, 2023 purporting to be that of the Directors of the Interested Party herein was done by individuals who are not directors of the Interested Party hence it has no legal effect as the same cannot bind the Company. According to the Respondents, the application is frivolous and scandalous and should be dismissed with costs.
 8. The Respondents also find their Replying Affidavit sworn on 4th July, 2023 and reiterate their position as per the Grounds of Opposition that the Applicant Esther Njeru is not a party to the suit and does not have *locus standi* since she is not a Director of the Interested Party as indicated in the form CR12 dated 27th June, 2023 of the Interested Party.
 9. The Respondents further hold that the firm of H. Kago & Co. Advocates is not on record for the Interested Party and thus does not have *locus standi* to represent the Interested Party. They urge that the court finds that the firm of Waweru Kihara & Co Advocates is properly on record for the Defendants.

Analysis and determination

10. The court directed the parties to file their Submissions in respect to the



Application to which the Interested Party filed its on 11th July, 2023 whereas Respondents filed theirs on 13th July, 2023, which the court has considered simultaneously and find the main issues for consideration are as follows:-

- a. Whether the Interested party has locus standi to bring the application.
- b. Whether there was contempt of court orders of 16th May, 2023.

Whether the Interested party has locus standi to bring the application.

11. The deponent of the Supporting Affidavit, Esther Njeru states that she is a bona fide Director of the Interested Party. According to the CR 12 filed for the Interested Party and dated 27th June, 2023, the said Esther Njeru is not listed as a Director of the Interested Party. It therefore follows that she does not have the locus standi to file the application or swear the Affidavit on behalf of the Company.
12. The definition of *locus standi* was explained in the case of *Law Society of Kenya v Commissioner of Lands & Others*, Nakuru High Court Civil Case No.464 of 2000, as follows:-

“*Locus Standi* signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of *Alfred Njau and Others v City Council of Nairobi* [1982] KAR 229, the Court also held that:-

“the term *Locus Standi* means a right to appear in Court and conversely to say that a person has no *Locus Standi* means that he has no right to appear or be heard in such and such proceedings”.
13. The court therefore finds that the Deponent herein did not have the locus standi to file the application as she was not a Director of the Interested Party.
14. The other issue is whether the Interested Party’s Counsel’s H. Kago & Company Advocates has the *locus standi* to represent it. It is worth noting that the Memorandum of Appearance dated 30th May, 2023 was filed by the firm of Waweru Kihara & Co Advocates filed on behalf of the Defendants and the Interested Party.
15. The court further notes that there is a Notice of Change of Advocates dated 21st June, 2023 filed by H. Kago Company Advocates to act for the Interested Party in place of Waweru Kihara & Co Advocates.
16. The court further notes there is Notice of Change of Advocates dated 26th June, 2023 filed by Waweru Kihara & Co Advocates to act for the Interested Party in place of H. Kago Company Advocates which was filed in court on 27th June, 2023.
17. Therefore, this court finds that as at 29th June, 2023 which is the date of the Interested Party’s application, the firm of H. Kago Company Advocates was not properly on record and hence lacked the *locus standi* to represent the Applicant. This then explains prayer No.2 of the Application where the Applicant has sought the court to deem the firm of H. Kago Company Advocates to be duly appointed by the Interested Party to represent it in the matter.
18. It is the court’s view that it cannot direct a firm of Advocates to represent any of the parties in a suit as that is based on the decision of the particular party to choose to either instruct an advocate or to even act in person. That being the case, the court does not have the powers to grant prayer 2 and the same is thus denied.



19. In the end, the court finds that the issue of locus standi goes to the core of the case and the same cannot be cured by Article 159 of the *Constitution* as it is not a procedural technicality.
20. In view of the finding above, the court finds that there is no need to address the merits of the application for contempt of court when the Applicant lacks the locus standi to bring the suit in court therefore, the only recourse is to dismiss the application with costs to the Defendants.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 25TH DAY OF JANUARY, 2024.

D. O. CHEPKWONY

JUDGE

